

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DORIS CLARKSON, et al. :

Plaintiff, :

-against- :

91 CV 1792 (RWS)
Inmate Movant: Reginald McFadden
(DIN 95A6279)

GLENN GOORD, et al. :

Defendants. :

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DECLARATION OF JEB HARBEN

I, JEB HARBEN, an attorney duly admitted to practice law in this Court, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Assistant Attorney General in the Office of ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, attorney for the named defendants in this action. I submit this declaration, the exhibits annexed hereto, the declarations (and exhibits annexed thereto) of Nancy Heywood, Esq. and Lucy Buther and accompanying Memorandum of Law in opposition to Reginald McFadden's Amended Motion for Contempt dated October 24, 2013.

2. Attached as Exhibit A is a true and correct copy of this Court's June 6, 1996 Order in this action.

3. Attached as Exhibit B is a true and correct copy of this Court's October 23, 2003 Order in this action.

4. Attached as Exhibit C is a true and correct copy of this Court's December 8, 2011 Order in this action.

5. Attached as Exhibit D is a true and correct copy of the decision in McFadden v. Wilhelm, 03 Civ. 8341 (S.D.N.Y. June 24, 2008).

6. Attached as Exhibit G are true and correct copies of excerpts from an August 2012 disciplinary hearing that plaintiff attached to his December 2013 motion papers, which were previously forwarded to the Court.

7. I have reviewed my files in this matter (and the legal assistant assisting me on this case did the same with respect to his files) and have found no record of plaintiff providing medical records releases to the Office of the Attorney General prior to the releases forwarded by plaintiff in or about late December 2013. Nor did the materials served by plaintiff in or about October 2013 bear any indication that they contained medical records releases. I have no recollection of plaintiff providing releases other than those forwarded in or about late December 2013 (plaintiff provided a medical records release dated December 26, 2013 at that time) and have been advised by the legal assistant assisting me on this matter that he has no recollection of receiving releases as well.

8. On December 12, 2013, the above legal assistant requested medical (not psychiatric) records from DOCCS (the same day I advised the Court that my office had not yet obtained medical records releases) after we determined that the Office of the Attorney General had not yet obtained medical records from DOCCS or releases from Mr. McFadden in this case.

9. Mr. McFadden's DOCCS medical records were forwarded to the Office of the Attorney General on December 30 and received on January 8, 2014. Attached as Exhibit E is a true and correct copy of the relevant portion of the front of the envelope in which these records were sent.

10. While, as a practical matter, I do not normally review or utilize medical records in a litigation until a release is obtained, in a case such as this where a briefing deadline may be fast approaching and a release is expected to be received shortly, records may often be requested in

advance because it can sometimes take 2-6 weeks for copies to be made and forwarded by DOCCS.

11. Attached hereto as Exhibit F is a true and correct copy of 7 N.Y.C.R.R. § 5.24(b), which allows DOCCS to provide copies of inmate medical records to the Office of the Attorney General for litigation purposes. My understanding is that a medical records release (or court authorization) is necessary to utilize such records for court filings.

WHEREFORE, for the reasons stated in the attached Memorandum of Law and all other submissions made herein, it is respectfully submitted that this Court should deny Reginald McFadden's motion and demands made in his March 13, 2014 letter in their entirety.

Executed: New York, New York
April 17, 2014

/s/

JEB HARBEN
Assistant Attorney General